

## Rothbard's Competing Defense Agencies in Anarchy

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I showed in my essay "[Rothbard's Rejection of Economics: The Ethics of His Non-invasive Society](#)," that Rothbard's treatment of the private supply of judicial and police services in his 1962 book *Man, Economy and State* (MES) was confusing. He began by building an image of interaction among individuals who he assumed do not perform invasive actions and in which all property had been rightfully acquired by noninvasive means. He rightly called an image of such interaction the "noninvasive society" and noted that no government would be needed to block theft and other so-called invasions of person and property. Yet without explicitly dropping the assumption of the absence of invasive actions, he proceeded to incorporate into that image what he called "some enforcing agency." Why, a careful reader must ask, is an "enforcing agency" necessary if individuals do not perform invasive actions? Rothbard's answer, as pointed out in my essay, was that such an agency is needed to block theft, vandalism, and robbery and to resolve disputes about whether an action is invasive.

After a close examination, I showed that Rothbard added two implicit assumptions about members of the noninvasive society. The first is that some individuals may, in fact, commit invasive actions. The second is that the members may have conflicting points of view about what constitutes an invasive action. A resident of the noninvasive society may claim that she was injured by an

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invasive action, while the performer of the action may claim that the action was not invasive. A dispute may arise. To resolve it, the enforcing agency would have to perform two tasks: (1) reinforce the core set of social mores by punishing actions that are broadly regarded as impermissible and (2) to decide which actions are permissible for actions where no consensus on social mores yet exists. By performing these tasks, the agency helps to remove the prospect for conflict among individuals with different views and to reduce the sphere of uncertainty.

In his discussion of the enforcing agency, Rothbard at first hinted that it could be a government. Later in the book, however, he produced ethical theorems that allowed him to deduce that *all* government actions are harmful.

My companion essay also concluded that Rothbard did not show how the enforcing agency, or agencies, would deal with serious threats to capitalism. He neglected both the more serious internal threats from gangsters and outlaws and the external threats from prospective conquerors. Thus, he did not show that capitalism could develop under realistic conditions. Recognizing this deficiency, at least in part, he sought in his later writings to build an image of interaction in which he added new enforcing agency tasks. In addition, he expanded his image of the supply of enforcing agency tasks to include an industry of competing *defense agencies* that supply what he called “defense services.”<sup>1</sup> In this essay, I show that this new image also fails to deal with realistic threats. In spite of these extensions, he still was unable to support his contention that capitalism could exist without a government.

To my knowledge, Rothbard’s attempted resolution was not published until Mises had retired from public life. His first effort was in his first chapter of his 1970 *Power and Market* (PM). The second was in a 1975 essay entitled “[Society without a State](#) (SWS).” In both writings, he claimed that competing private defense agencies could, under plausible assumptions about reality, perform the enforcing agency tasks relating to social mores that he introduced in MES. In addition, he proposed that such agencies could block other threats to capitalism. He explicitly allowed a wider range of invasive actions to occur and he introduced the prospect that crimes and outlaws might threaten the security of the members of the noninvasive society. He still did not complete the task of showing how these agencies could block internal and external threats. Nevertheless, his efforts tell the reader more about his conception of the anarcho-capitalism he was promoting.

When the promoters of anarcho-capitalism today explain their faith that capitalism could exist without government, they refer to such defense agencies. A reader who wants to learn the basis for such faith must consult these two writings.

The aim of this essay is to examine these efforts to expand the role of the enforcing agency. Before beginning, it is wise to remind the reader of Rothbard’s conflation of his “free market” with the free market that economists have traditionally used in building economic theorems. The former assumes the absence of invasive actions. The latter contains invasive actions that must be controlled in some way. In both writings considered here, Rothbard switches from one meaning of the “free

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<sup>1</sup>The term “defense agency” appears only once in MES but it dominates PM. The shift in terminology might be explained by Meyer’s critique of Rothbard’s draft of the combined treatise to the Volcker Fund in 1959 (see the section of my companion essay entitled “[Personal Freedom and Rightfully-Acquired Property](#)”).

market” and “free society” to another. A reader who wants to understand his claims in these writings must be aware of this loose terminology.

The essay proceeds as follows. Part One presents and analyzes Rothbard’s image in PM of an industry comprised of competing insurance companies that supply “defense services.” It also discusses Rothbard’s critique of “laissez faireists.” According to Rothbard, these are supporters of capitalism who assert that it could not exist without a government. To critique laissez faireists is part of Rothbard’s agenda to persuade readers to support anarcho-capitalism. Part Two presents the arguments in his 1975 article. That article expands on his image of defense services in combating domestic aggression (internal threats) and it at least broaches the issue of external threats to person and property in a no-government situation. Part Three is a conclusion.

## 1. FREE MARKET DEFENSE SERVICES AGAINST THREATS TO REAL CAPITALISM IN *POWER AND MARKET*

Practically all of Rothbard’s discussion of defense services is in his first chapter of *Power and Market*. The analysis of his claim consists of presenting his argument and then suggesting that it is based on an incomplete and unrealistic view of both the threats to capitalism and the potential to deal with those threats without a monopoly over coercion – i.e., a government. In his introductory paragraph, he equates the free market, the free society, and “free market capitalism” to his image of the noninvasive society. As shown in my [essay on this subject](#), Rothbard’s image is derived from his assumption that no invasive actions occur. He used the image to derive his ethical theorems about government while falsely asserting that he was doing “economic analysis.” He continues this deception or delusion in this chapter by asserting that an “economist cannot fully analyze the exchange structure of the free market without setting forth the theory of property rights, of justice in property, that would have to obtain in a free-market society” (MES: 1047). The only relevant issue to the economist who is concerned with reality is whether people could protect themselves from invasive actions if everyone did not conform to a core set of mores and refrain from performing invasive actions. The question is whether Rothbard provides a means of accounting for realistic internal and external threats to property. Rothbard seems to recognize this fact. He sets out to demonstrate, through reason, that people could, without creating a monopoly of force, deter invasive actions by means of what he calls competing firms that supply defense services (MES: 1048-9).

### **The Image of Competing Non-government Defense Firms**

The first step in analyzing Rothbard’s claim is to define “defense services,” which he immediately describes as “police protection and judicial findings” (MES: 1048, 1239). He conceives of these services being supplied by competing insurance companies, apparently analogous to how health maintenance organizations supply health services (MES: 1052; 1241). He assumes that customers receive the services by subscribing to one of the insurers (MES: 1054). Prospective customers, worried about the invasive actions of others, are willing to pay a fee that is sufficiently high to enable the firms to earn profit. Regarding judicial services, the insurers perform the two tasks that I described in my [companion essay](#). They (1) enforce against actions that are already regarded as impermissible according to existing mores and (2) decide which actions are permissible in cases

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where no consensus yet exists. If disputes arise between different insurers, the insurers can appeal to firms that supply independent appeals judgments (MES: 1052-3).

He considers two possible domestic threats to capitalism. The first is a defense services firm's use of force "to aggress against others." The second is a private court's collusion "to make fraudulent decisions and thus aggress against its subscribers and victims" (MES: 1054).

He does not immediately try to answer these questions. He digresses. He writes about abuses by States. It is as if he is saying that individuals living without a government need not worry about aggression by private police and judicial agencies because, in a capitalist system that contains a government, the monopoly government defense agency has aggressed. This digression is a rhetorical device, not an answer to the question he asks. It is a non-sequitur. Everyone knows that in real capitalist economies, governments have aggressed. But this fact is irrelevant to the question of whether a private defense agency may "aggress against its subscribers and victims" or whether private courts may collude.

Following this digression, he states a belief that in the event that one agency became an "outlaw," other agencies would join together to hunt down the aggressor and punish it. Specifically, he writes:

The checks and balances in the stateless society consist precisely in the free market, i.e., the existence of freely competitive police and judicial agencies that could quickly be mobilized to put down any outlaw agency (*ibid.*).

He provides no rationale for his belief. Is it realistic? Clearly, if the spoils from being an outlaw were sufficiently high, the incentive to invent and produce superior firepower would be great. Moreover, the principal-agent problem would be present in the formation of a coalition of the presumed competing police agencies that Rothbard implicitly assumes would be mobilized. Beyond that, even if such a coalition could be successful in disposing of the "outlaw," the profitability of extracting the wealth that Rothbard assumes would exist in the "free society" would be an enticement for coalition members to take by force what they had previously tried to acquire in competition with each other. A consideration of Rothbard's solution to the problem of the outlaw firm suggests that this argument is unreasonable.

#### **Refutation of the Laissez Faireists**

Rothbard includes a section in which he presents arguments intended to refute what he calls laissez faire economists, or "laissez faireists." He describes such economists as "strongly" believing "that defense services *cannot* be supplied by the market and that defense against invasion of property must therefore be supplied outside the free market by the coercive force of the government" (MES: 1048). He goes on to assert that such economists "are caught in an insoluble contradiction, for they sanction and advocate massive invasion of property by the very agency (government) that is supposed to defend people against invasion!"

#### *Rothbard's Inadequate Definitions*

Rothbard does not specify any particular laissez faireist. It is evident, however, that his definition is unusual. Laissez faire is an ideology about government that maintains that government should intervene in market interaction as little as possible. According to the usual meaning, an advocate of laissez faire would only sanction takings and intervention to the extent that she regards it as necessary to defend capitalism. Yet Rothbard asserts that laissez faireists advocate massive takings

of and other interventions in the use of property. Thus, Rothbard causes confusion with his terminology at the very outset of his exercise.

He causes further terminological confusion with his use of the phrase “defense services,” which he does not define. The typical reader might expect that he would be referring to the deterrence of potential invasions by foreign military powers, barbaric plunderers or attacks on person and property using weapons of mass destruction. Instead, he is writing about the prevention and deterrence of invasive actions such as theft, vandalism and robbery, as described in Part Two of my [essay on the noninvasive society](#).<sup>2</sup> Accordingly, he does not address the concerns of laissez fairests who fear external threats.

The confusion is compounded when one contemplates the *means* of preventing and deterring the invasive actions. Rothbard discusses only two such means: police and judicial services. Although he describes judicial services as judgments about whether an alleged invasive action has occurred, he says nothing about how such a judgment would be enforced. In other words, he does not tell how a person who harms others but who is not a subscriber to an insurance provider would be punished. He seems to assume implicitly that the “criminal” would ultimately conform to a core set of mores, as described above. Having been caught, she would agree to be punished in order to salvage her reputation. But he does not say this (MES 1052-3).<sup>3</sup> Nor does he make any provision for tracking down and punishing those people who persistently deviate from the core set of mores and who do not subscribe to defense service-providing insurers.

In short, Rothbard’s laissez fairest is a strawman, he identifies only the least significant threats to capitalism, and he does not specify workable means of deterring such threats. As a result, it is impossible to evaluate and analyze his assertion that the police services regarded by a laissez fairest as necessary could be provided without a government. It follows that Rothbard’s discussion of police and judicial services in the “free market” is irrelevant to the concerns of those who hold what people ordinarily regard as a laissez faire ideology.

### *Three Irrelevant Arguments*

Rothbard makes three direct efforts to refute the laissez fairest. Each is off the mark. First he confronts the laissez fairest head-on by asserting that the state is *not* needed to define and allocate private property rights in the “free society.”

[W]e have seen that the principles of a free society...imply a very definite theory of property rights, namely, self-ownership and the ownership of natural resources found and transformed by one’s labor...no State or similar agency contrary to the market is needed to define or allocate property rights (MES: 1049).

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<sup>2</sup>This interpretation is based on his reference to the MES treatment of an invasive action (MES 176-184)..

<sup>3</sup>In fact, he skirts the issue by referring first to codes of justice that have existed under governments and second to his assertion that whatever imperfection there might be in the application of justice, a government monopoly over justice has done greater harm in the past and can be expected to do so in the future as well (MES: 1053-4). He ends with the fatalistic comment that “any experimentation with a stateless society would have nothing to lose and everything to gain” (MES: 1055). His disdain for government apparently leads him to ignore the possibility of utter chaos under anarchy as compared with the occasionally interrupted yet ever-increasing standards of living that humankind has experienced over the last three centuries.

These statements about the “free society” refer to the noninvasive society. However, Rothbard did not show that a noninvasive society could be realized.

His second effort at refutation is against an argument that is not part of the *laissez faire* ideology. He says that the *laissez faire*ist argues that because defense services are necessary, they must be supplied by a government. He reasons by analogy. Food, he says, is necessary; but it need not be provided by a government. Therefore, the claim that a government must provide defense services is a *non sequitur*.

However, the *laissez faire* argument is based on the assumption that defense against internal and external threats to capitalism is necessary. The *laissez faire* ideology maintains that in the absence of a government, such defense would not be supplied efficiently or to a sufficient extent. As a result, the survival of capitalism would be threatened. The ideology is concerned with the survival of capitalism in light of coercive threats not with the survival of individuals in light of the scarcity of food. Rothbard’s burden is to show that market interaction under capitalism could survive internal and external threats to it in the absence of government. He does not accept this burden.

In his third effort, Rothbard argues that

the world has lived quite well throughout its existence without a single, ultimate decision-maker over its whole inhabited surface...the private citizens of the various countries, despite widely differing legal systems, have managed to live together in harmony without having a single government over them...while *laissez faire*ists should by the logic of their position, be ardent believers in a single, unified world government, so that no one will live in a state of “anarchy” in relation to anyone else, they almost never are (MES: 1050-1).

This statement is quite remarkable in light of two facts that Rothbard conveniently omits. The first concerns harmony. Rothbard’s claim that “private citizens have managed to live in harmony” cannot be taken seriously. Did he somehow forget the history of barbarism, colonialism, the two devastating world wars, the cold war threats of the Soviets and Chinese Communists to capitalism, and the great exterminations and starvation that occurred in both of these recent socialist experiments?<sup>4</sup>

The second fact is the existence of Mises’s own recommendation for world peace and prosperity. During the closing years of World War II, Mises had addressed this subject exactly in the way that Rothbard claims the *laissez faire*ists had almost never done. He wrote:

The main need is a lasting coöperation among the nations today united in their efforts to smash the totalitarian aggression. No plan can work if the nations concerned do not transform their present alliance into a permanent and lasting union. If they resume their prewar policies after the victory, if they return to political rivalries and to economic warfare, the result will be a repetition of the developments of 1919-39. There can be neither effective political coöperation nor solidarity and collective security among nations fighting each other in the economic sphere.

If the Western democracies do not succeed in establishing a permanent union, the fruits of victory will be lost again. Their disunity will provide the defeated aggressors with the opportunity to enter anew the scene of political intrigues and plots, to rearm and to form a new and stronger coalition for another assault. Unless they choose effective solidarity, the democracies are doomed. They cannot safeguard their way of life if they seek to preserve what the terminology of diplomacy calls “national sovereignty.” They must choose between vesting all power in a new supernational authority or being enslaved by nations not prepared to treat them on an equal footing. The alternative

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<sup>4</sup>I do not mean to imply that the study of history is a means of predicting the future. This false proposition stems from scientism and economic positivism.

to incorporation into a new democratic supernational system is not unrestricted sovereignty but ultimate subjugation by the totalitarian powers (Mises 1944: 263).

It is difficult to regard Rothbard's chapter on defense services as a serious effort to deal with realistic threats of aggression to the citizens of the hypothetical anarcho-capitalist society. First, the title itself suggest that the entire chapter is an exercise in confusion, since he does not define defense services and since, in any case, their provision would be redundant in his "free market." Second, he does not discuss the incentives of prospective gangsters, robbers, extortionists, and kidnappers to acquire superior power in order to extract capitalist wealth. Third, he disregards the "asocial and short-sighted aggressors" (UF: 99).<sup>5</sup> Fourth, he completely disregards external threats and, thereby, a rationale for national defense. Fifth, his treatment of social mores is simplistic. To seriously deal with these, he would have to take account of the vast differences among individuals in their cultures, ethnic groups, religious beliefs, languages, etc.

## 2. THE "SOCIETY WITHOUT A STATE"

Rothbard uses similar reasoning in SWS. This is an article written for a libertarian journal of which he is listed as editor. It concerns anarchism. He wants to show how "a 'society without a state' – that is, a hypothetical anarchist society – might function successfully" (SWS: 1). He defines anarchism as a proposal to "abolish the state, that is, to abolish the regularized institution of aggressive coercion." What he really means is that it is an ideology. He makes this clear in his introduction when he writes that the anarchist position "is precisely marked by opposition to all physical coercion invasive of, or aggressing against, person and property." A necessary complement to this opposition is an opposition to the state.

Anarchists oppose the state because it has its very being in such aggression, namely, the expropriation of private property through taxation, the coercive exclusion of other providers of defense service from its territory, and all of the other depredations and coercions that are built upon these twin foci of invasions of individual rights (*ibid.*).

He defines the state as

that institution which possesses one or both (almost always both) of the following properties: (1) it acquires its income by the physical coercion known as 'taxation'; and (2) it asserts and usually obtains a coerced monopoly of the provision of defense service (police and courts) over a given territorial area (*ibid.*).

Unlike the chapter in PM, he does not use the term "government" to refer to the state. The apparent reason for this is that he wants to present the argument that "governing" is possible without what most people call government. Thus he writes:

To be opposed to the state is then not necessarily to be opposed to services that have often been linked with it; to be opposed to the state does not necessarily imply that we must be opposed to police protection, courts, arbitration, the minting of money, postal service, or roads and highways (*ibid.*).

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<sup>5</sup>In HA he writes of individuals "who are narrow-minded or too weak to adjust themselves spontaneously to the conditions of social life" (HA: 149) and of "antisocial elements" (HA:280).



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The purpose of his article, he says, is to refute the difficult argument that “the state must exist and act, even if it is only a ‘necessary evil’ instead of a positive good” (SWS: 4).<sup>6</sup> More specifically, it is to combat the argument that

the state is at least vitally necessary to provide police protection, the judicial resolution of disputes and enforcement of contracts, and the creation of the law itself that is to be enforced. My contention is that all of these admittedly necessary services of protection can be satisfactorily and efficiently supplied by private persons and institutions on the free market (*ibid.*).

The article differs from his PM chapter in several respects. First, he aims to present an image of anarchy that does not

assume that all people are good and that without the state no crime would be committed. [Nor does it assume] that with the abolition of the state a New Anarchist Man will emerge, cooperative, humane, and benevolent, so that no problem of crime will then plague the society (*ibid.*).

Second, he provides a more extensive discussion of how defense agencies would deal with domestic aggression. Third, he at least raises the possibility of threats from external aggression.

In my analysis of his article, I first discuss his projection of how private defense agencies would defend against domestic aggression. Then I do the same for external aggression.

### **Defense against Domestic Aggression**

I begin with an examination of Rothbard’s image of how domestic crimes of aggression will be handled in the “anarchistic society.”

#### *Rothbard’s Statement of the Problem*

As in his PM chapter, he assumes that insurance companies would supply defense services. He introduces his discussion by assuming that disputes are inevitable and that arbitration is necessary. However, arbitration need not be performed by agents of the government. Thus arbitration

poses little difficulty for a portrayal of the free society. But what of torts or crimes of aggression where there has been no contract? Or suppose that the breaker of a contract defies the arbitration award? Is ostracism enough? In short, how can courts develop in the free-market anarchist society which will have the power to enforce judgments against criminals or contract breakers? ([SWS: 6](#))

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<sup>6</sup>The article can be conceived as an attack on Mises, although Rothbard does not mention him. Mises had cautioned against the “necessary evil” view. His most definitive statement was in the last book that he wrote:

Government as such is not only not an evil but the most necessary and beneficial institution, as without it no lasting social cooperation and no civilization could be developed and preserved. It is a means to cope with an inherent imperfection of many, perhaps of the majority of all people (Mises 1962: 98).

Also see Mises 1964: 58.

In fact, Rothbard did not confront Mises’s writings on this issue here. After Mises died, however, Rothbard criticized him vigorously both in Rothbard 1976b and Rothbard 1980. See his discussion of Mises in Rothbard 1976b: 89-90.



Note his use of the term ostracism. As in the case of the enforcing agency described in my [companion article](#), he is assuming a core set of mores.

### *Ambiguity in the Statement*

Other parts of this statement of the problem cannot be taken at face value in light of the task Rothbard set for himself. To see this one must first distinguish between the term “free society,” and the actual situation he plans to consider. He wants to show that crimes can be controlled by means of voluntary contracts between competing suppliers of defense services. However, if he cannot show this, then there can be no contracts between enforcement agents and subscribers. The entire system breaks down. To say that insurance companies can provide defense services by contract in a system where crimes are not first controlled in some other way is a non-sequitur.<sup>7</sup> Rothbard is putting the cart before the horse. His question should not be that of whether insurance companies can control crime but whether crime will be sufficiently controlled without insurance companies so that a [sphere of capitalism](#) can exist within which insurance companies can emerge as profitable enterprises.

That said, his analysis of competing insurance companies does eventually consider the prospect that the contract system would break down. Thus, the horse, so to speak, eventually finds its way to the head of the cart. With this in mind, I proceed directly to his analysis.

### *The No-government Situation*

My first order of business is to clear the path by removing all ambiguity connected with Rothbard’s conflation of the free market with the anarchistic society. Rothbard characterizes “anarchy” as a “society.” Since Mises defined society as “division of labor and combination of labor” (HA: 143) and since I am investigating whether a division of labor under capitalism can emerge without a government, it would be confusing to use the term “anarchy.” I need a name to refer to a situation in which there is neither government nor society. To avoid as much confusion as possible, I introduce the term “no-government situation.”

It is certainly reasonable to assume that in the no-government situation, acts of aggression (“crimes”) would exist and also that people would complain about what modern professional economists call negative external effects (torts).<sup>8</sup> Switching terminology from the “free society” to the no-government situation is useful in answering questions about whether capitalism could exist without a government, or state.

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<sup>7</sup>Compare Rothbard’s reasoning with that contained in Mises’s first writings on this subject. Mises writes:

If it is asserted that utterly *all* disputes between peoples can be settled through courts of arbitration, so that decision by war can be quite eliminated, then the fact must be noted that every administration of justice first presupposes the existence of a generally recognized law and then the possibility of applying the legal maxims to the individual case. Neither applies to those disputes between nations of which we speak. All attempts to create a substantive international law through whose application disputes among nations could be decided have miscarried (Mises 1919: 120).

<sup>8</sup>In the latter case, it is reasonable to assume that private property rights will be incomplete and in some cases impossible to make complete.

*The Assumption That Contracts Exist in the No-government Situation*

A reader must disregard Rothbard's assumption that contracts already exist to arbitrate torts. Most individuals, he seems to say, have made contracts that could determine who would be an acceptable arbiter of complaints. The only rationale he provides for making such an assumption is a non sequitur. Referring to quotations from a book written by someone else, he writes:

Even in the present statist era, the notorious inefficiency and coercive and cumbersome procedures of the politically run government courts has led increasing numbers of citizens to turn to voluntary and expert arbitration for a speedy and harmonious settling of disputes ([SWS: 5](#)).

Clearly, the fact that citizens in the "statist era" have made contracts with arbiters does not have anything to do with the question of whether people would have incentives to make such contracts in the no-government situation. The question is whether capitalism could exist without a government.

It follows that the only point of relevance in his opening statement of the problem is that he aims to show whether aggression can be controlled without a government. It is only from this point of view that it makes sense to discuss the rest of Rothbard's article.

*The Opportunity Cost of Killing*

In this section, I analyze Rothbard's most telling example in which one person kills another. Rothbard intends for this example to show how prospective killers are deterred from killing. It is concerned with the choice to kill from the viewpoint of a prospective killer. He assumes that such a potential killer lives in a society in which individuals arrange for their security by subscribing to competing defense service-providing insurance firms. Each firm employs judges to hear complaints from subscribers or against subscribers, to decide whether a particular behavior will be designated a crime, and to determine the penalty to be applied. And each provides police services and prosecutorial services to subscribers in cases where the perpetrator and victim both subscribe. Thus, Rothbard writes that it is the role of judges and courts in these companies "to use socially accepted procedures to determine who the criminals...are" ([SWS: 6](#)).

Once he sets the stage, he first discusses subscriber complaints against other subscribers to the same firm. He assumes that all complaints by a subscriber that she was a victim of a crime amount to disputes. The subscriber makes a complaint to his firm. Both plaintiff and defendant are summoned before the firm's judge, who decides whether a crime has been committed. If necessary, the firm's police and punishment services are invoked to impose the penalty to which the defendant has agreed, in advance, to pay.

Suppose that the defendant is a subscriber to another firm. Then, the two firms must agree on a venue and a judge to hear the case. Once an agreement is made, the summonses are issued and the adjudication process begins at the agreed-upon venue and is decided by the agreed-upon judge.

In such cases, there is a possibility of conflict. What if a firm disagrees with a judicial decision? Rothbard's answer is to assume the presence of a different type of firm, or competing firms, that

supply *appeals services*. He implicitly assumes that the insurers have agreed to use a particular appeals service firm or that they would agree to do so if the need arises.<sup>9</sup>

This scenario is not relevant to the question of whether capitalism could emerge in the first place. The next scenario is. It is one in which an insurance company responds to a subscriber complaint that is brought against a killer who has chosen to not subscribe to any other insurance company. Rothbard assumes that a subscriber accuses a non-subscriber of a killing. He calls this case the “Hatfield McCoy problem.” He considers several variations. My focus is on the last one, which is the most telling. In this case, the Hatfield family subscribes to an insurance company. The McCoy family does not. The scenario begins when a surviving Hatfield kills a McCoy. McCoy then retaliates by killing a Hatfield. But McCoy mistakenly kills the wrong Hatfield.

A Hatfield brings a complaint against McCoy to his insurance company and McCoy is found guilty of murder by the judge. Since McCoy is not represented by an insurer, the Hatfields’ insurer can only negotiate compensation if McCoy himself agrees to the negotiation. If McCoy does not agree, he would be immune from prosecution, conviction and punishment. Hatfield’s insurer would be powerless.

The only important aspect of this scenario for my purpose is the killing itself or, more accurately, the interference with capitalism that can be caused by widespread killings and other disruptive actions. Whether it is justified or unjustified or whether a judge decides that the killer is guilty is unimportant. A judge’s ruling cannot be enforced against someone who is not a subscriber. The question is this: how, in a no-government situation, where potential killers and other disrupters are free from threatened coercion, can there be sufficient order for a sphere of capitalism to emerge.

To see how Rothbard deals with killers who are outside the system of contracts, consider his further discussion of whether the killing will go unpunished. He writes:

Surely, in most instances, individuals [in McCoy’s position] will wish to obviate such problems by taking their case to a court and thereby gain social acceptability for their defensive retaliation – not for the act of retaliation but for the correctness of deciding who the criminal in any given case might be (SWS: 6).

His point in making this statement is to state an assumption which, up to now, he has not made. It is that, even though McCoy chooses not to subscribe to an insurance company, he nevertheless faces a high opportunity cost of killing due to his desire for social acceptance. Specifically Rothbard assumes that McCoy would feel social pressure to demonstrate to others that his killing of the non-deserving Hatfield was unintentional and also that he would have been justified to kill the deserving Hatfield.

This assumption implies still further assumptions about mores. One is that the killing of a person as retaliation for the others’ killing of a kin is socially acceptable. According to the core set of mores, the first Hatfield who killed a McCoy deserved to be killed and McCoy would have been judged innocent of wrongdoing if he had killed the deserving Hatfield. However, the killing of a person who does not deserve to be killed is contrary to the core set of mores. Since McCoy killed a non-deserving Hatfield, he would be judged guilty of wrongdoing.

A second assumption is about intentionality. The intentional killing of a non-deserving person is not socially acceptable according to the mores. The accidental and mistaken-identity killing of a non-

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<sup>9</sup>He sees no serious problems arising if insurers disagree over an appeals court judgment.

deserving person is more acceptable. As a result, McCoy expects the judge's penalty to be low. Accordingly he is willing to submit to the judgment of some insurance agency even though he knows that he could avoid the deterrent cost completely if he did not submit.

*No Competing Defense Services Needed for Social Mores to be Applied*

It is worth pointing out that courts are not needed to make this judgment. The entire apparatus that Rothbard builds to deal with the potential disruptive effects of killings – namely, the system of private insurers – is unnecessary. If social mores exist, they can be determined and judged by anyone with a strong reputation for knowing those mores and applying them fairly in his judgments. If a particular individual has gained a sufficient reputation among residents to make fair judgments about the mores, McCoy can plead his case to that person. He can pay the person to hear his case, to make a judgment and to publicize it. The question, of course, is whether someone could acquire such a reputation in a no-government situation. I now turn to this question.

For the conditions to exist that would enable a person to gain such respect, there must already be some sort of social cooperation. One might expect such cooperation to exist if capitalism already exists. For example, sellers of products and services have an incentive to develop reputations for fair dealing. Members of the community may well trust one of these sellers to know the mores and to apply them fairly to McCoy's case. Yet one cannot realistically assume that capitalism already exists because the task is to prove that it could emerge in a no-government situation.

In the final analysis, Rothbard's example does not show how to deter violence in the no-government situation. It does not deal with the presence of people who act "antisocially" (HA: 149, 280), as described in Part One of this essay. Rothbard merely disregards such individuals.

*The Outlaw Defense Agency*

Perhaps recognizing this fact, Rothbard follows the pattern he set in PM of considering the possibility that one of the competing defense agencies would become an "outlaw." He slightly expands on his earlier analysis. He writes:

Should a private police agency turn outlaw, should "Prudential" become a protection racket, it would then lack...social legitimacy... "Prudential" would be seen by all as bandits...And lacking such legitimacy, "Prudential" would have to face the wrath of the public and the defense and retaliation of the other private defense agencies, the police and courts, on the free market. Given these inherent checks and limits, a successful transformation from a free society to bandit rule becomes most unlikely. Indeed, historically, it has been very difficult for a state to arise to supplant a stateless society; usually, it has come about through external conquest rather than by evolution from within a society ([SWS: 7](#)).

Here he again assumes the existence of at least partial capitalism, thereby making his argument a non sequitur. To support the claim that the anarchist ideology can be put into practice, one must show that cooperation under the division of labor and capitalism can exist without a government. The argument based on the interpretation of historical facts is specious. First, history does not repeat itself. Second the statement of the historical facts does not support the feasibility of a stateless society. Stateless situations in which residents have achieved a modicum of the division of labor have been conquered by states.

Finally, it is worth noting that Rothbard does not discuss crimes committed by uninsured individuals against other individuals who are also not insured. Yet such crimes may be sufficiently extensive to threaten the insured with collateral damage. Moreover, when one considers aggressive actions outside the system of competing insurers, he must recognize that the prospect for gain from such actions may motivate the aggressors to develop more and more sophisticated and potent means of aggression. If the police that are employed in the insurance industry do not match those means, the internal threat may increase to the point where the hypothetical anarcho-capitalism system is attacked and destroyed.

### **Defense against External Aggression**

In this article, Rothbard skirts the problem of defense against foreign aggressors. Nevertheless, he writes in passing that the entire set of international relations would be more desirable from the standpoint of the people of the world if no governments existed. He writes that no

combination of private marauders can possibly begin to match the state's unremitting record of theft, confiscation, oppression, and mass murder. No collection of Mafia or private bank robbers can begin to compare with all the Hiroshimas, Dresdens, and Lidices and their analogues through the history of mankind (SWS: 4).

This line of reasoning has two obvious defects. The first is that he bases on it historical events. By referring to these three historical events as examples of the harm that governments can do, he shows that he wants his readers to conclude that because governments of the past have caused great harm, reliance on government instead of on an "anarchist system" to control coercion is bound to cause great harm in the future. Such reasoning is classic positivism, as Rothbard knows. Each instance of social and market interaction is unique. The past is not a reliable indicator of the future. Predictions based on simple extrapolation may be useful as propaganda. But they are not part of a body of knowledge about the consequences of government action.

The second defect is equally serious. The specific examples of harm that Rothbard attributes to governments in the past were not directed against their citizens but against foreigners. The US government aimed to deter the Japanese and Germans from continuing to threaten world peace and trade. They were instances in which a government sought to defend against external aggression. Had the war not been conducted, it is at least arguable that US citizens and their foreign trading partners would have been killed and lost more property than they did. The war authorities justified the US's lead in the Allied attacks on Hiroshima and Dresden by the claim that they would protect the anticipated victims of aggression – US citizens including the soldiers, US trading partners, and other allies in war. Moreover, the harm caused by the government was not directed against the nation's own citizens.<sup>10</sup> One can agree that these acts were horrible from the standpoint of the people who

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<sup>10</sup>One might argue that the real aggressions against its citizens were the taxes, conscription and other restrictions on market interaction that existed in the US during wartime. But this is not the argument that Rothbard makes.

were objects of them. But a plausible argument can be made that in the absence of such aggression against such would-be conquerors external threats, the suffering by citizens from the marauders would have been greater. Rothbard's references to the harm caused to aggressing foreigners by a government that is charged with protecting against threats are misdirected.

Of course, the Nazis did commit atrocities against Germany's own citizens, particularly the Jews. However, social mores did not support the holocaust. This aggression was the policy of an anti-semitic dictator and his henchmen backed by government propaganda, scaremongering and terror.

Lidices was a Nazi Germany mass murder of Czechs carried out in retaliation for an assassination. In this case, the Nazis were aggressors seeking territory and dominance over neighbors. They did not aggress against the citizens of Germany.

In short, the examples do not fit the argument that Rothbard aims to make. Rothbard's use of them indicates a confused conflation between the harm caused by governments in general and the harm caused by a government that provides defense against real and potential external threats. The implied reasoning is specious.

Rothbard could have written about protection against pirates and international kidnapers. And he could have identified the more modern tools of killing that the aggressive governments of today can use such as foreign-initiated mega-bombs, mass poisoning, or sabotage of communication, transportation, and energy networks. He does not mention these or the conflicts of ideology that today are most apt to motivate attack.

### 3. CONCLUSION

This essay has analyzed Rothbard's contention that competing defense agencies would emerge in a no-government situation. Such agencies would, according to Rothbard, be like HMO-type insurance companies that make contracts with subscribers to supply judicial and police services. It is easy to imagine the emergence of such agencies under the conditions of capitalism – in a situation where the government controls the monopoly over coercion and compulsion. In modern capitalist economies, individuals make contracts with judges to arbitrate disputes and they hire private guards to protect their persons and property. However, Rothbard assumes that they would emerge in a no-government situation – i.e., under anarchy. One question raised by this assumption is whether, in the absence of a government to begin with, individuals would have an incentive to make the contracts required for such defense agencies to emerge. Rothbard ultimately answers this question by referring to mores. But this answer begs another question that he does not answer. How could such social mores emerge?

The function of a government, as conceived by Mises, is to provide security against threats from asocial and short-sighted individuals who put their short-run interests ahead of their long-run interests. By asocial, he means characteristics that are just the opposite of those that conform to social mores. The asocial and short-sighted individuals would threaten the development of and

continuation of capitalism and the mores that Rothbard assumes would enable contracts to be made. Given that individuals are divided geographically into groups, such security is required against threats to capitalism both from within a group (criminals) and from outside the group (invaders and would-be conquerors).

In light of Mises's delineation of the function of government, Rothbard's burden was to show that defense against internal and external threats could be provided in the absence of a government. He tries to do this, albeit without ever mentioning Mises, as if Mises never dealt with the problem of evaluating the policies proposed by anarchists.

In MES, Rothbard did not even attempt to show that these functions could be performed. In the two writings considered in this chapter, he dealt mainly with internal threats. By examining his examples of competing defense agencies, I showed that his claim was ultimately based on the assumption that the actions of the asocial and short-sighted individuals who share their geographical space would be tempered by their desire to conform to social mores.

Is Rothbard's contention relevant today? One can surely imagine that relatively homogeneous individuals with like-minded ideologies regarding invasive acts could join together, buy a parcel of land that is not located inside the boundaries of some nation, and begin an anarcho-capitalist community. However, it is hardly realistic to expect that such a community could protect itself against external threats from those whose ideologies are vastly different and who covet the capital owned by the anarchists or who wish to dominate or destroy the people in the community. The ideologies held by different people in the world about how to act toward those who differ substantially from them have always been extremely diverse. Today, due to the knowledge produced by historians, journalists, and those who profess their ideologies publicly, ordinary people are more aware of such diversity than ever. There seems to be little doubt that even if such an ideologically homogenous anarcho-capitalist community could form and thrive, it would soon face external threats.

There is, in addition, the question of how the people in such a community could benefit from the international division of labor without contributing to the deterrence of threats to the international transportation of traded goods, to communication networks and to other ancillary services that support international commerce. Finally, there is the question of whether the homogeneity of ideologies required for the community to form in the first place would continue to exist in light of individuals' freedom to change their ideologies. These are the more difficult challenges that Rothbard did not try to meet.

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\*In chronological order according to the date of publication of the first edition.